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CASE # 99-1259

In The Supreme Court Of The United States

ARTURO ARIZAGA RAMOS,

PETITIONER,

v.

DISTRICT DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, OFFICE OF IMMIGRATION JUDGE

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY

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STATEMENT IN REPLY

1. In many respects, petitioner agrees with the Statement of the Respondent, however, Respondent has omitted a number of material legal issues and facts and for that reason, uses this opportunity to bring them to this court's attention.

a. At page three, Respondent omits, or fails to disclose that **no appeal, review, or habeas corpus** is available on a finding that an alien has suffered an "aggravated felony. See IIRAIRA § 304(a)(3), creating INA § 240a(C); 8 U.S.C., § 1252(a)(2)(C).. (Pet. P. 2.)

b. At page 4, Respondent omits the fact that at the time of entry, Petitioner was only 5 years old, that he is currently married to an American citizen, and that his entire family resides in the United States. Pet., p. 4.

c. At page 4, Respondent also correctly points out that the district court dismissed for lack of jurisdiction under § 1252(b)(9), but fails to point out that the district court in this case lacked jurisdiction under 8 U.S.C., §

1252(a)(2)(C), because the Hobbs Act is not available to Petitioner in view of his status as an aggravated felon, and it is this section that Petitioner challenges under general habeas corpus rules. U.S. Const., Art. I, § 9; 28 U.S.C., § 2241.[1]

d. The Respondent points out the ruling of the District Court accurately, but fails, or omits, to state that the court never addressed the issues raised by Petitioner: Can Congress make deportation **mandatory** without regard to the particularized facts of the case; can Congress deny aliens convicted of an "aggravated felonies" access to the court do challenge IIRAIRA and the provisions which Petitioner believes objectionable.

e. Respondent, at p. 6, correctly points out that the court "further ruled that petitioner ... had the opportunity to appeal to the BIA ...." This omits the fact that while Petitioner had the opportunity, his issues were pretermitted by Respondent, Pet. App. p. A11, the law bars discretionary cancellation, and bars judicial review of any kind, hence the fact of failure to file a timely administrative appeal is not relevant.

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[1] Petitioner's initial pleading was denominated "COMPLAINT FOR HABEAS CORPUS RELIEF; ...." It alleged jurisdiction under, among other sections, "29 (sic) U.S.C. § 1651 (sic) ... Art. I, § 9, 1st .... Amendment ... " 28 U.S.C., § 2241 appears to be limited to prisoner cases. Defective allegations of jurisdiction may be amended, on terms, in the trial or appellate courts. 28 U.S.C., § 1653. Neither the courts below nor Respondent appear to have been misled by the citation. E.g., Respondent framed the issue citing 28 U.S.C., 2241. Respondent, p. (I). A subsidiary issue is whether the District Court had jurisdiction under the All Writs Act, 28 U.S.C., § 1651 in view of U.S. Const., Art. I, § 9 (Habeas Corpus) & 1st Amendment Right to Petition for redress of grievances.

ARGUMENT IN REPLY

1. Respondent casts Petitioner's claims as a denial of equal protection of the laws. Respondent, p. 8-9.

a. Petitioner has never claimed denial of equal protection of the laws because, obviously, citizens cannot be deported. Petitioner has claimed, based on precedent from this court, that he has procedural and substantive due process claims and that Congress stepped over the line in **mandating** deportation of "aggravated felons" regardless of the facts, or impact on family, denying "aggravated felons" access to the courts to challenge both the act and the deportation, in the right case. Pet., p. 12.

b. Respondent claims that "discretionary relief is "an act of grace."" Respondent, p. 10. This court has held that while there may be discretion, discretion may be directed in a particular manner, such that denial of discretion in the manner specified amounts to a denial of due process of law. *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 11-12 (1979) [Expectation exists[2]]; *Board of Pardons v. Allen*, 482 U.S. 369 (1987) [Expectation exists[3]]. In this case, there are family rights to association to

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[2] Nebraska Revised Statues § 83-1,114(1)(1981): "Whenever the Board of Parole considers the release of a committed offender who is eligible for release on parole, it *shall* order his release unless it is of the opinion that his release should be deferred because: (a) There is substantial risk that he will not conform to the conditions of parole; (b) His release would depreciate the seriousness of his crime or promote disrespect for law; (c) His release would have a substantially adverse effect on institutional discipline; or (d) His continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his capacity to lead a law-abiding life when released at a later date"

[3] Montana Code Annotated: "Prisoners eligible for parole. (1) Subject to the following restrictions, the board *shall* release on parole . . .

be considered, and while petitioner's rights may be diminished in some respect, there are others with their rights fully in tact. *Procunier v. Martinez*, 416 U.S. 396 (1978) (1st Amendment; Communications; Family Rights).

2. Respondent claims that the district court found that is had no jurisdiction, and rightly denied the petition for habeas corpus, conceding there is a conflict with other circuits. Respondent, pp. 11-12. This case in fact does present the vehicle for review of these issues because of the suspension of habeas corpus relief to a segment of persons who might well be entitled to relief, but denied access to the courts because of the label "aggravated felon." Furthermore, even in *Reno v. American-Arab Anti-Discrimination Committee*, 42 L.Ed.2d 929 (1999), distinguishable on the facts, this court held that legal resident aliens did have due process rights. This case presents issues relating to the scope of those due process rights. Pet. P. 15.

The following case relied upon by the panel overlooks or ignores an important principal of constitutional law:

CONCLUSION

WHEREFORE, Petitioner prays, for all, or any one of, the foregoing reasons, this court grant the writ of *certiorari* to the Ninth circuit, and summarily reverse and remand, or set the matter for briefing and argument.

Dated: April 12, 2000

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any person confined in the Montana state prison or the women's correctional center . . . when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community[.] (2) A parole shall be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen."

RESPECTFULLY SUBMITTED,

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